

Univ. of Ill. Library
51
3171

THE CUBAN ~~AMERICAN~~ SUGAR COMPANY

WITH


THE NATIONAL CITY BANK OF NEW YORK,
AS TRUSTEE

Trust Agreement

Dated March 15, 1921

SECURING

\$10,000,000 FIRST MORTGAGE COLLATERAL EIGHT PER CENT. SINKING FUND
GOLD BONDS



Digitized by the Internet Archive
in 2017 with funding from
University of Illinois Urbana-Champaign Alternates

<https://archive.org/details/cubanamericansug00cuba>

Agreement, this 15th day of March, 1921, between THE CUBAN-AMERICAN SUGAR COMPANY, a corporation organized and existing under the laws of the State of New Jersey (hereinafter called the "Company"), party of the first part, and THE NATIONAL CITY BANK OF NEW YORK, a corporation organized and existing under the laws of the United States of America (hereinafter called the "Trustee"), party of the second part.

WHEREAS, the Company has deemed it necessary to borrow money for its corporate purposes and, to that end, has duly authorized and directed an issue of bonds, not exceeding the aggregate principal amount of Ten Million Dollars, to be designated as its First Mortgage Collateral Eight Per Cent. Sinking Fund Gold Bonds, to be dated as of March 15, 1921, to mature March 15, 1931, to be secured by the pledge of the property hereinafter described, to bear interest from date at the rate of eight per cent. per annum, payable semi-annually on September 15 and March 15 in each year, to be signed in its corporate name by its President or a Vice-President, impressed with its corporate seal, attested by its Secretary or an Assistant Secretary, to have interest coupons attached, executed with the facsimile signature of its Treasurer, and to be authenticated by the certificate of the Trustee indorsed thereon, which Bonds, interest coupons and Trustee's certificate are to be substantially in the following forms, respectively (except that the words "unless the Bond herein mentioned shall have been called for previous redemption," shall be omitted from all interest coupons maturing September 15, 1921) :

1874/51
C. P. ...
Records

[FORM OF BOND]

No.

\$

UNITED STATES OF AMERICA

THE CUBAN-AMERICAN SUGAR COMPANY

FIRST MORTGAGE COLLATERAL EIGHT PER CENT. SINKING
FUND GOLD BOND

THE CUBAN-AMERICAN SUGAR COMPANY (hereinafter called the "Company"), for value received, promises to pay to Bearer, or if the ownership of this Bond be registered, to the registered holder hereof, the principal sum of

Dollars, on March 15, 1931, and to pay interest thereon from the date hereof, at the rate of eight per cent. per annum, semi-annually on September 15 and March 15 in each year. Until the maturity of this Bond, such interest shall be paid only upon the presentation and surrender of the attached interest coupons as they severally mature. Both principal and interest of this Bond are payable in United States gold coin of or equal to the present standard of weight and fineness, at the principal office of the Trustee hereinafter named, in the Borough of Manhattan, City and State of New York.

This is one of a duly authorized issue of Bonds of the Company, of an aggregate principal amount of not exceeding Ten Million Dollars, known as its First Mortgage Collateral Eight Per Cent. Sinking Fund Gold Bonds, all of like date and substantially similar tenor, except as to the denomination thereof, and all issued under and equally secured by a certain Trust Agreement, dated March 15, 1921, executed by the Company and The National City Bank of New York, as Trustee, to which Trust Agreement reference is hereby made for a statement of the terms under which the said Bonds are issued, the nature of the security and the rights and obligations of the Company, the Trustee and the respective holders of the said Bonds with respect thereto.

In the event of default by the Company as set forth in the said Trust Agreement, the principal of all the

Bonds issued and outstanding thereunder may be declared or may become due and payable before maturity in the manner and with the effect therein provided.

This Bond, together with all other outstanding Bonds of this issue, may be redeemed as a whole, but not as to a part only thereof, on any semi-annual interest date prior to maturity, upon at least thirty days' prior published notice, and in the manner provided in the said Trust Agreement, at 107½ per cent. of the principal amount thereof.

This Bond shall pass by delivery until registered in the owner's name on books kept for that purpose at the said principal office of the Trustee, such registration being noted hereon. After such registration, no further transfer hereof shall be valid unless made on the said books by the registered holder in person or by duly authorized attorney, and similarly noted hereon; but this Bond may be discharged from registry by being in like manner transferred to bearer, and thereupon transferability by delivery shall be restored. This Bond shall continue to be subject to successive registrations and transfers to bearer, at the option of the holder; but no registration shall affect the negotiability of the attached interest coupons, which shall continue to be payable to bearer and transferable by delivery merely.

No recourse shall be had for the payment of any part of either principal or interest of this Bond, or for any claim based hereon or thereon, or otherwise in any manner in respect hereof or in respect of the said Trust Agreement, to or against any stockholder, officer or director of the Company, past, present or future, by virtue of any statute or by the enforcement of any assessment or penalty or in any manner.

This Bond shall not be obligatory or valid for any purpose until authenticated by the execution by the Trustee of the certificate indorsed hereon.

IN WITNESS WHEREOF, the Company has caused this Bond to be executed in its corporate name by its President or a Vice-President and impressed with its corporate seal, attested by its Secretary or an Assistant Secretary,

and the attached interest coupons to be executed with the facsimile signature of its Treasurer, as of March 15, 1921.

THE CUBAN-AMERICAN SUGAR COMPANY,
By

President

Attest:

Secretary

[FORM OF INTEREST COUPON]

No.

\$

On the 15th day of _____, 19____, unless the Bond herein mentioned shall have been called for previous redemption, THE CUBAN-AMERICAN SUGAR COMPANY will pay to Bearer, at the principal office of The National City Bank of New York, in the Borough of Manhattan, City and State of New York,

Dollars, in United States gold coin, being six months' interest then due on its First Mortgage Collateral Eight Per Cent. Sinking Fund Gold Bond, No. _____.

Treasurer

[FORM OF TRUSTEE'S CERTIFICATE]

This is one of the Bonds described in the within mentioned Trust Agreement.

THE NATIONAL CITY BANK OF NEW YORK,
as Trustee,

By

AND WHEREAS all things necessary to make the Bonds, when duly authenticated by the Trustee, the valid, binding and legal obligations of the Company, and to constitute this Agreement a valid instrument for the security thereof, have been done and performed, and the execution and delivery of this Agreement and the issue of the Bonds, as in this Agreement provided, have been in all respects duly authorized;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That, in consideration of the premises and of the purchase and acceptance of the Bonds by those who shall hold the same from time to time, and of the sum of One Dollar to the Company duly paid by the Trustee, the receipt whereof is hereby acknowledged, and to secure the payment of the principal and interest of all the Bonds at any time issued and outstanding hereunder, according to their tenor and effect, and to secure the faithful observance and performance of all the covenants and conditions herein contained, the Company has assigned, conveyed, pledged, transferred and set over, and, by these presents, does assign, convey, pledge, transfer and set over unto the Trustee, its successors and assigns, forever, ALL AND SINGULAR the following described first mortgage bonds now owned by the Company (which, together with any other securities which may at any time be held by the Trustee hereunder, are hereinafter sometimes referred to, collectively, as the "pledged property") :

\$3,000,000, aggregate principal amount, First Mortgage Five Per Cent. Gold Bonds, maturing April 1, 1952, of the Colonial Sugars Company, a corporation organized and existing under the laws of the State of New Jersey ;

\$3,500,000, aggregate principal amount, Refunding First Mortgage Six Per Cent. Gold Bonds, Series B, maturing October 1, 1929, of The Chaparra Sugar Company, a corporation organized and existing under the laws of the State of New Jersey ;

\$1,000,000, aggregate principal amount, Refunding First Mortgage Six Per Cent. Gold Bonds, Series B, maturing October 1, 1929, of The Tinguaro Sugar Company, a corporation organized and existing under the Laws of the State of New Jersey ;

\$300,000, aggregate principal amount, Refunding First Mortgage Six Per Cent. Gold Bonds, Series B, maturing October 1, 1929, of The Cuban Sugar Refining Company, a corporation organized and existing under the Laws of the State of New Jersey;

\$900,000, aggregate principal amount, Refunding First Mortgage Six Per Cent. Gold Bonds, Series C, maturing October 1, 1929, of the said The Cuban Sugar Refining Company;

\$2,060,000, aggregate principal amount, First Mortgage Six Per Cent. Gold Bonds, Series A, maturing October 1, 1929, of the San Manuel Sugar Company, a corporation organized and existing under the Laws of the State of New Jersey;

\$770,000, aggregate principal amount, First Mortgage Six Per Cent. Gold Bonds, Series A, maturing October 1, 1929, of the Chaparra Railroad Company, a corporation organized and existing under the Laws of the State of New Jersey;

\$400,000, aggregate principal amount, Refunding First Mortgage Six Per Cent. Gold Bonds, Series B, maturing October 1, 1929, of The Unidad Sugar Company, a corporation organized and existing under the Laws of the State of New Jersey; and

\$500,000, aggregate principal amount, Refunding First Mortgage Six Per Cent. Gold Bonds, Series C, maturing October 1, 1929, of the Mercedita Sugar Company, a corporation organized and existing under the Laws of the State of New Jersey;

IN TRUST, NEVERTHELESS, upon the terms and conditions herein set forth, for those who shall hold the Bonds issued hereunder and the interest coupons pertaining thereto, without preference of any of the Bonds or interest coupons over any of the others by reason of priority in the time of issue, sale or negotiation thereof, or otherwise for any cause whatever;

PROVIDED, HOWEVER, and these presents are upon the express condition, that, if the Company, its successors or assigns, shall well and truly pay, or cause or secure to be paid, the principal of the Bonds and the interest due or to become due thereon, at the times and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, and shall well and truly keep, perform and observe all the covenants and conditions in this Agreement expressed to be kept, performed and observed by it, and shall pay to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then this Agreement and the rights hereby granted shall cease, determine and be void, and the Trustee, in such case, on written demand of the Company, shall cancel and satisfy this Agreement and shall deliver to or upon the written order of the Company, signed by its President or a Vice-President and its Secretary or an Assistant Secretary, the pledged property then in its possession; otherwise to be and remain in full force and effect.

AND IT IS HEREBY COVENANTED AND AGREED, that the Bonds are to be issued, authenticated and delivered, and the pledged property is to be held by the Trustee, subject to the following covenants, conditions, uses and trusts:

ARTICLE FIRST.

DESIGNATION, FORM, ISSUE, AUTHENTICATION AND REGISTRATION OF BONDS.

SECTION 1. The Bonds to be issued under this Agreement shall be designated as the Company's "First Mortgage Collateral Eight Per Cent. Sinking Fund Gold Bonds", and they and the interest coupons attached thereto shall be substantially in the form and of the tenor hereinbefore recited, respectively. Bonds may be

issued, at the option of the Company, in denominations of either \$1000 or \$500.

SECTION 2. Upon the execution hereof, the Company shall execute in the manner hereinbefore recited and deliver to the Trustee, Ten Million Dollars, aggregate principal amount, of Bonds; and the Trustee shall thereupon authenticate the same and deliver the Bonds so authenticated to or upon the written order of the Company, signed by its President or a Vice-President. The Trustee shall be under no obligation to see to the proper application of the Bonds, or of the proceeds thereof, by the Company.

Only such Bonds as shall be authenticated by a certificate substantially in the form hereinbefore recited, executed by the Trustee, shall be entitled to any right or benefit under this Agreement; and such authentication by the Trustee shall be conclusive evidence that any Bond so authenticated has been duly issued hereunder and that the holder is entitled to the benefits hereof.

SECTION 3. The holder of any definitive Bond may have the ownership thereof registered on books to be kept for that purpose at the principal office of the Trustee in the Borough of Manhattan, City and State of New York, and such registration noted on the Bond. After such registration, no further transfer of such Bond shall be valid unless made on the said books by the registered holder in person or by duly authorized attorney and similarly noted on the Bond; but the same may be discharged from registry by being in like manner transferred to bearer, and thereupon transferability by delivery shall be restored. Bonds shall continue to be subject to successive registrations and transfers to bearer, at the option of their respective holders; but no registration of any Bond shall affect the negotiability of the interest cou-

pons pertaining thereto, which shall continue to be payable to bearer and transferable by delivery merely.

SECTION 4. Until definitive Bonds are prepared, the Company may execute and deliver typewritten or printed temporary Bonds, substantially of the tenor of the Bonds hereinbefore recited, except that such temporary Bonds shall be issued without interest coupons and need not contain provisions for registration. Such temporary Bonds shall be of the denominations of \$500, \$1000 or any multiple thereof, as the Company may determine, and shall bear upon their face the words, "Temporary Bond: exchangeable for a like principal amount of definitive Bonds", and shall be authenticated by the Trustee in substantially the same manner as is herein provided for the definitive Bonds, and such authentication shall be conclusive evidence that any temporary Bond so authenticated has been duly issued hereunder, and that the holder is entitled to the benefits of this Agreement. Any or all such temporary Bonds duly issued and authenticated hereunder shall be exchangeable for a like principal amount of definitive Bonds, when such definitive Bonds are ready for delivery, and, upon any such exchange, the temporary Bonds shall forthwith be cancelled by the Trustee and, upon demand, delivered to the Company. Until so exchanged, such temporary Bonds shall in all respects be entitled to the benefits of this Agreement, as Bonds issued and authenticated hereunder; and interest, when and as paid, shall be indorsed thereon.

SECTION 5. In case any Bond issued hereunder, with its interest coupons, if any, shall be mutilated, destroyed or lost, the Company in its discretion may issue, and thereupon the Trustee shall authenticate and deliver, a new Bond of like denomination, tenor and date, in exchange and substitution for and upon the cancellation of

the mutilated Bond and its interest coupons, or in lieu of and in substitution for the Bond and its interest coupons so destroyed or lost, upon receipt of evidence satisfactory to the Company and the Trustee of the destruction or loss of such Bond and its interest coupons and upon the receipt, also, of indemnity satisfactory to them.

ARTICLE SECOND.

COVENANTS OF THE COMPANY.

The Company covenants with the Trustee and with the holders of the Bonds as follows:

SECTION 6. The Company will pay the principal and interest of all the Bonds duly issued hereunder according to the terms thereof and of this Agreement.

SECTION 7. The Company will at all times, until the payment of all the Bonds issued hereunder, keep an office or agency in the Borough of Manhattan, City and State of New York, where notices and demands in respect of such Bonds may be served; and it will, from time to time, give notice to the Trustee of the location of such office or agency. In case the Company shall fail so to do, notices may be served and demands may be made at the principal office of the Trustee, in the said Borough of Manhattan, City of New York. The Company will at all times keep or cause to be kept at the said principal office of the Trustee, books in which the ownership of any of the definitive Bonds may be registered, upon presentation thereof for such purpose, as provided in Section 3 hereof.

SECTION 8. So long as any of the Bonds remain outstanding and unpaid, the Company will not directly or indirectly extend or assent to the extension of the time

for the payment of any interest coupon or claim for interest of or upon any Bond, and it will not directly or indirectly be a party to any arrangement therefor, either by purchasing or refunding or in any manner keeping alive such interest coupon or claim for interest, or otherwise. In case the payment of any such interest coupon or claim for interest shall be so extended by or with or without the consent of the Company, then, anything in this Agreement contained to the contrary notwithstanding, such interest coupon or claim for interest so extended shall not be entitled, in case of default hereunder, to any benefit of or under this Agreement, except after the prior payment in full of the principal of all the Bonds issued hereunder and of all such interest coupons and claims for interest as shall not have been so extended.

SECTION 9. The Company is lawfully possessed of all the first mortgage bonds hereby pledged, and has good right to pledge the same for the purposes herein expressed. The said bonds are respectively secured by mortgages constituting first mortgage liens upon the properties therein described, respectively, which are substantially all the properties and assets of the several corporations issuing the said bonds; and the said bonds are all the bonds now issued and outstanding under the said mortgages, respectively. The Company will cause the said mortgages and any and all documents supplemental thereto to be and be kept filed and recorded in such manner and in such places as may be required by law, in order fully to preserve and protect the respective liens thereof and the security of the bonds issued thereunder.

SECTION 10. At the date of the execution of this Agreement, the Company owns or controls, free and clear of any pledge or lien or adverse claim whatever, all the issued and outstanding shares of the capital stock of the

following named subsidiary companies, each of which is a corporation organized and existing under the laws of the State of New Jersey :

The Chaparra Sugar Com-	Mercedita Sugar Company
pany	The Cuban Sugar Refining
Chaparra Railroad Com-	Company
pany	The Unidad Sugar Company
San Manuel Sugar Com-	Colonial Sugars Company
pany	
The Tinguaro Sugar Com-	
pany	

The properties and assets of each of the said subsidiary companies are free of any mortgage or lien of any character, other than *censos* or charges for religious purposes and the liens of the mortgages respectively securing the bonds pledged hereunder.

SECTION 11. Within ninety days after the date of this Agreement, the Company will cause the said Chaparra Railroad Company to issue \$2,130,000, aggregate principal amount, additional bonds of its issue of First Mortgage Six Per Cent. Gold Bonds, Series A, hereinbefore described, and will cause the said San Manuel Sugar Company to issue \$1,440,000, aggregate principal amount, additional bonds of its issue of First Mortgage Six Per Cent. Gold Bonds, Series A, hereinbefore described; and, upon the issue thereof, the Company will forthwith acquire all the said bonds and pledge the same with the trustee, as additional security under this Agreement.

SECTION 12. So long as any of the Bonds remain outstanding and unpaid, the Company will comply, and will cause each subsidiary company (as defined in Section 46 hereof) to comply, with all lawful requirements of the laws of the State of New Jersey and of any other State or States of the United States of America and of the Re-

public of Cuba and of any other government, applicable to the Company or to any subsidiary company; and it will not do, suffer or permit any act or thing whereby the payment of the indebtedness evidenced by the Bonds issued hereunder might or could be hindered, delayed or imperilled, or whereby the security of the same might or could be impaired or injuriously affected.

SECTION 13. The Company will cause each of its subsidiary companies, the bonds of which may from time to time be pledged hereunder, faithfully to observe and perform all the covenants and agreements contained in the mortgages respectively securing such bonds; and the Company hereby unconditionally guarantees the due and punctual payment of the principal and interest of all bonds from time to time pledged under this Agreement, and the faithful observance and performance of each and all of the terms, conditions and covenants contained in each of the mortgages securing the same, respectively.

SECTION 14. So long as any of the Bonds remain outstanding and unpaid, the Company will not execute any mortgage upon, or make any pledge of, any part of its fixed assets (as defined in Section 46 hereof) and it will not either directly or indirectly make, issue or negotiate any other issue of bonds, notes or other funded obligations, or contract any funded indebtedness, without expressly providing as part of the terms thereof, that all such bonds, notes and other funded obligations or indebtedness shall be subject and subordinate to the Bonds issued under this Agreement, and that, until all the Bonds issued hereunder shall have been paid in full, none of such other bonds, notes, funded obligations or indebtedness shall be payable or paid, and that the payment of the same shall be unconditionally postponed, and that the holders thereof

shall have no right in law or in equity to sue for or enforce the payment thereof, by suit or otherwise; *provided*, that nothing herein shall apply to such notes, debts, obligations, liabilities or contracts as may be made, incurred or contracted by the Company in the ordinary course of conducting its business, and maturing not later than one year from their date; and *provided*, further, that nothing herein contained shall prevent the Company from acquiring property subject to an existing mortgage or mortgages thereon of not exceeding sixty per cent. of the fair value thereof, or from securing the purchase price of any property hereafter acquired by a purchase money mortgage or mortgages of not exceeding a like percentage of its fair value.

SECTION 15. So long as any of the Bonds remain outstanding and unpaid, the Company will at no time suffer or permit any subsidiary company whose bonds may, at the time, be pledged under this Agreement, to execute any additional mortgage upon, or make any pledge of, any part of its fixed assets, unless all the bonds or other obligations secured thereby are forthwith pledged with the Trustee hereunder as additional security for the Bonds issued under this Agreement; and the Company will in no event cause, suffer or permit any subsidiary company to execute any mortgage upon, or make any pledge of, any part of its fixed assets, or to make, issue or negotiate any bonds, notes or other funded obligations, whether or not the same shall be secured by mortgage or pledge, unless the Company shall forthwith acquire, free from lien of any character, all of such bonds, notes or other obligations; *provided*, that nothing herein shall apply to such notes, debts, obligations, liabilities or contracts as may be made, incurred or contracted by any subsidiary company in the ordinary course of

conducting its business and maturing not later than one year from their date; and *provided*, further, that nothing herein contained shall prevent a subsidiary company from acquiring property subject to an existing mortgage or mortgages thereon, if the liability assumed by such subsidiary company with respect to the aggregate indebtedness secured by such mortgage or mortgages shall not exceed sixty per cent. of the fair physical value of such property, or from securing the purchase price of property hereafter acquired by a purchase money mortgage or mortgages of not exceeding in the aggregate a like percentage of its fair physical value.

SECTION 16. So long as any of the Bonds remain outstanding and unpaid, the Company will from time to time acquire, as issued, such proportion of any additional stock which may be issued by any of its subsidiary companies, as the amount owned or controlled by the Company immediately prior to such issue bore to the total amount of the capital stock of such subsidiary company then outstanding; and whenever any subsidiary company, the bonds of which shall at the time be pledged hereunder, shall become entitled, under the terms of the mortgage securing such bonds, to have additional bonds authenticated thereunder, the Company will promptly cause all additional bonds to which such subsidiary company may be entitled, to be executed by such subsidiary company, authenticated by the trustee acting under the mortgage securing the same, and pledged with the Trustee hereunder as additional security for the Bonds issued under this Agreement.

SECTION 17. So long as any of the Bonds remain outstanding and unpaid, the Company will not sell or otherwise dispose of any shares of stock of any subsidiary company, the bonds of which shall at the time be pledged under this Agreement.

SECTION 18. So long as any of the Bonds remain outstanding and unpaid, the Company will at all times maintain net current assets (as defined in Section 46 hereof) at an amount at least equal to the aggregate principal amount of the Bonds outstanding hereunder.

SECTION 19. So long as any of the Bonds remain outstanding and unpaid, the Company will not suffer or permit any subsidiary company, the bonds of which shall at the time be pledged hereunder, to merge into or consolidate with any other corporation, except the Company or another subsidiary company, or to sell or otherwise dispose of its properties as an entirety, except to the Company or to another subsidiary company, or to lease any substantial part of its properties, except to the Company or to another subsidiary company; *provided*, that any subsidiary company may from time to time lease sugar cane producing properties, or portions thereof, to farmers or *colonos* under the usual *colono* contracts for the cultivation of cane.

SECTION 20. In case the Company or any subsidiary company, the bonds of which shall at the time be pledged hereunder, shall sell any substantial or essential part of its fixed assets, the Company will cause the proceeds of such sale, or an amount equivalent thereto, to be applied to the purchase of other fixed assets at least equal in value to the properties sold, and shall not distribute or apply any part of such proceeds either by way of a dividend or distribution of capital or profits, or in the payment of current expenses, or in any other manner, except as above provided; *provided*, that at the option of the Company any part of such proceeds may be paid over to the Trustee, to be applied by it in the manner provided in Section 31 hereof.

Without in any way limiting the meaning of the term "substantial or essential part of its fixed assets", whenever the fair value of the fixed assets of the Company and its subsidiary companies, sold within any period of one year, shall exceed the sum of One Hundred Thousand Dollars, in the aggregate, such excess shall be considered to be a substantial or essential part of the fixed assets of the corporation selling the same.

SECTION 21. The Company and each of its subsidiary companies will at all times maintain, preserve and keep all its and their property, buildings, machinery, apparatus, equipment and fixtures in thorough repair and condition, and will, from time to time, make, all needful and proper repairs thereto and replacements thereof, and will promptly pay and discharge, or cause to be paid and discharged, any and all lawful taxes, rates, levies, assessments, liens, claims or other charges whatever upon its and their respective properties, and every part thereof, and upon the income derived from its and their operations.

SECTION 22. The Company and each of its subsidiary companies will keep their respective buildings, apparatus, equipment, fixtures and stock of materials insured in good and responsible insurance companies against loss or damage, in such manner and to the same extent as has been usual in its business, and will furnish, or cause to be furnished, to the Trustee evidence to its satisfaction of all insurance, whenever so requested by it, and at least once in each year.

In case of loss or damage of any of the said properties, whereby the sum of \$50,000 or more shall be collected or received under any policy or policies of insurance, all such insurance moneys, or an amount equivalent thereto, unless otherwise applied pursuant to the

terms of any mortgage securing any bonds of the company suffering such loss or damage, shall be applied either (a) in or toward the restoration of the property so lost or damaged, or (b) in or toward the acquisition of other property for the use of the business of the company suffering such loss or damage, the title to which shall be vested in it, or (c) in or toward the construction of new buildings for such company, or (d) in or toward the purchase of new machinery, equipment, apparatus or fixtures which shall be in addition to the plant of such company and not in substitution of old or worn out machinery, equipment, apparatus or fixtures, or (e), if not so applied within six months after the collection or receipt thereof, the said moneys or the unexpended balance thereof, or an amount equivalent thereto, unless otherwise applied, as aforesaid, pursuant to the terms of any mortgage, shall be paid over to the Trustee to be applied by it in the manner provided in Section 31 hereof.

SECTION 23. Within ninety days after the close of each fiscal year the Company will render to the Trustee an officially certified consolidated statement of its income account for the year and a consolidated balance sheet taken at the close thereof, setting forth the financial condition of the Company and its subsidiary companies for such year. Such statement, if required by the Trustee, shall be audited by certified public accountants appointed or approved by the Trustee.

ARTICLE THIRD.

REDEMPTION OF BONDS.

SECTION 24. The Company, at its option, may redeem all the outstanding Bonds, but not part only thereof, on any semi-annual interest date, prior to maturity, at 107½ per cent. of the principal amount thereof.

In case the Company shall desire so to redeem the outstanding Bonds, it shall publish in two daily newspapers of general circulation, published in the Borough of Manhattan, City and State of New York, once a week for four successive weeks, the first publication to be not less than thirty nor more than thirty-five days before such redemption date, notice of such intended redemption, specifying the date designated for redemption and requiring that the Bonds be then presented for payment at the principal office of the Trustee in the said Borough of Manhattan, City and State of New York. If the ownership of any of the Bonds is registered, notice of redemption shall also be mailed by the Company to the respective registered holders thereof, at least thirty days prior to the redemption date, at their addresses appearing upon the books of the Company.

SECTION 25. Notice of redemption having been given as in this Article Third prescribed and an amount sufficient to redeem all the outstanding Bonds having been deposited with the Trustee on or before the redemption date, such Bonds shall, on the date designated in such notice, become due and payable at the said principal office of the Trustee at the said redemption price; and upon the presentation thereof, with all interest coupons maturing subsequently to the said redemption date, such Bonds shall be paid and shall thereupon be cancelled and delivered to the Company. After the date so fixed for redemption, the Bonds shall cease to bear further interest.

ARTICLE FOURTH.

CONTROL OF PLEDGED SECURITIES.

SECTION 26. The Trustee may, but it shall not be obliged to, cause all bonds at any time pledged with it hereunder to be transferred into its name as Trustee, or

into the name of its nominee or nominees, and shall hold the same subject to the terms and conditions of this Agreement.

SECTION 27. So long as the Company shall not be in default hereunder, to the knowledge of the Trustee, the Company shall be entitled, from time to time, to collect for its own use all sums which may become due and payable for interest upon any bonds which shall be at the time pledged hereunder, or which may accrue upon any moneys deposited with the Trustee hereunder; and the Trustee, upon the written request of the Company, signed by its President or a Vice-President and its Secretary or an Assistant Secretary, shall, from time to time, deliver to the Company, or to its Treasurer or other officer or agent designated in such request, the interest coupons pertaining to any coupon bonds pledged hereunder, as the same become due and payable, and suitable assignments and orders for the payment of interest upon other pledged bonds, and shall pay over to it, or to its Treasurer or other officer or agent designated in such request, any and all sums which may be received or collected by the Trustee as interest upon any pledged bonds and any and all sums which may accrue as interest on any moneys deposited with the Trustee hereunder.

SECTION 28. If default be made by any corporation whose bonds shall at the time be pledged hereunder in respect to any of the covenants or conditions contained in the mortgage securing the same and such default shall continue for the period, if any, specified in such mortgage, the Trustee may and, upon the written request of the holders or owners of twenty-five per cent. in aggregate principal amount of the Bonds then outstanding hereunder, shall, request the trustee under the mortgage in

respect of which such default shall have been made to take such action thereunder as the Trustee hereunder, in its discretion, may deem advisable in the interest of the holders or owners of the Bonds of this issue. No such request, however, need be made by the Trustee hereunder, unless the holders or owners of Bonds of this issue shall furnish to the trustee under the mortgage in respect to which such default shall have been made the security (if any) required to be furnished by the terms of such mortgage. The Company and the holders of the Bonds issued hereunder hereby constitute and appoint the Trustee its and their true and lawful attorney, irrevocable, upon any such default, to make any such request, to give any notice, consent, assent, waiver or direction pursuant to any of the terms of the mortgage in respect to which such default shall have been made, and to receive any and all moneys applicable to the payment of principal or interest, or both, of any of the bonds secured thereby; *provided*, that no such notice, consent, assent, waiver or direction need be given by the Trustee, except upon the written request of the holders or owners of twenty-five per cent. in aggregate principal amount of the Bonds then outstanding hereunder, nor unless, also, such holders or owners shall have furnished to the Trustee security and indemnity satisfactory to it. Any moneys so received by the Trustee shall be applied by it in the manner hereinafter provided in Section 31 hereof.

SECTION 29. So long as the Company shall not be in default, to the knowledge of the Trustee, in the payment of the principal or the interest of any of the Bonds secured hereby, the date of maturity of any first mortgage bonds, due prior to March 15, 1931, at any time pledged under this Agreement, may at any time be extended, but not beyond March 15, 1931; and, in case of any such extension, the Trustee shall, upon the

written request of the Company, signed by its President or a Vice-President and its Treasurer or an Assistant Treasurer, deliver such bonds to the trustee then acting under the mortgage securing the same for the purpose of having such extension of the maturity thereof noted thereon and additional interest coupon sheets attached thereto, or, at the option of the Company, the Trustee shall surrender the said bonds to the trustee of the mortgage securing the same and accept in exchange therefor other bonds of the extended maturity, of the same issue and of a like aggregate principal amount, which bonds may be either in fully registered form or in coupon form with interest coupons attached.

SECTION 30. So long as the Company shall not be in default, to the knowledge of the Trustee, in the payment of the principal or the interest of any of the Bonds secured hereby, all, but not part only, of the first mortgage bonds of any one or more issues at any time pledged hereunder may be withdrawn by the Company, from time to time, upon the following terms and conditions:

A. The Company shall, in each case, deliver to the Trustee a copy of a Resolution or Resolutions of the Board of Directors of the Company, certified by its Secretary or an Assistant Secretary under its corporate seal, requesting the Trustee to release from the lien hereof and to deliver to or upon the written order of the Company, signed by its President or a Vice-President, all, but not part only, of the bonds of any one or more issues at the time pledged hereunder, specified in such Resolutions.

B. The Company shall either (a) pay to the Trustee an amount in cash equal to ninety per cent. of the aggregate principal amount of the bonds specified in the said Resolutions to be released, together with accrued interest thereon to the date of such release, or (b) deliver to and pledge with the Trustee hereunder, in negotiable form or

accompanied by duly executed transfer powers, in substitution for such bonds, all, but not part only, of the outstanding bonds of one or more issues, bearing interest at a rate not less than six per cent. per annum, maturing not later than ten years from the date of the pledge thereof, and respectively secured by a mortgage constituting a first lien upon the entire mortgageable assets of another or other subsidiary company or companies owning and operating sugar producing or refining properties situated in the West Indies or the United States of America, of a fair physical value equal to at least $166\frac{2}{3}\%$ per cent. of the aggregate principal amount of all the bonds issued under the mortgages respectively securing the same; *provided*, that if the aggregate principal amount of the bonds so pledged in substitution shall be less than the aggregate principal amount of the bonds specified in the said Resolutions so to be released, the Company also shall pay to the Trustee an amount in cash equal to at least ninety per cent. of the amount of such deficiency.

C. In case bonds are pledged in substitution, as above provided, the Company shall also deliver to the Trustee the following instruments:

(1) A copy of a Resolution or Resolutions of the Board of Directors of the Company, certified by its Secretary or an Assistant Secretary under its corporate seal, authorizing the pledge of such bonds hereunder.

(2) A copy of the mortgage securing the bonds so authorized to be pledged, certified by the trustee named in such mortgage as the trustee thereunder.

(3) A certificate signed by the President or a Vice-President and the Treasurer or an Assistant Treasurer of the Company, verified by one of such officers, certifying (*a*) that the corporation issuing the said bonds and owning the properties subject to the lien of the mortgage securing the same, is, at the time, a subsidiary company within the mean-

ing of this Agreement, actually engaged in operating such properties or the greater part thereof; (b) that the properties subject to the lien of the said mortgage constitute the entire mortgageable assets of such subsidiary company and that all, or substantially all, of the properties then subject to the said lien are sugar producing or refining properties situated in the West Indies or in the United States of America; (c) that the fair physical value of the properties subject to the lien of the said mortgage is equal to at least $166\frac{2}{3}$ per cent. of the aggregate principal amount of all bonds issued under the said mortgage, and (d) that the said bonds so authorized to be pledged are all the bonds at the time authorized and outstanding under and secured by the said mortgage.

(4) A certificate by a competent engineer (who may be employed by the Company), approved by the Trustee, setting forth in reasonable detail the fair physical value, at the time of the pledge of such bonds, of the properties then subject to the lien of the mortgage securing the same.

(5) An opinion of counsel (who may be counsel for the Company), that the bonds so authorized to be pledged are legally issued and are the valid, binding obligations of the corporation issuing the same, and are all equally secured by the mortgage under which they are issued; that such mortgage constitutes a valid instrument for the security thereof; and that, except only as to any *censos* or charges for religious purposes, such mortgage is a first lien on substantially all the properties described therein or in respect of the acquisition of which any additional bonds may be issued thereunder.

Whenever the requirements hereinbefore in this Section set forth shall have been fully complied with by the

Company, the Trustee shall release from the lien of this Agreement and deliver to or upon the written order of the Company, signed by its President or a Vice-President, the bonds specified in the Resolutions referred to in sub-division A of this Section.

SECTION 31. Any cash received by the Trustee at any time pursuant to any of the provisions of the foregoing Sections 20, 22, 28 or 30 hereof, and any cash at any time resulting from the sale of bonds or obligations of the United States of America, as hereinafter provided in sub-division A of this Section 31, shall be held by the Trustee, subject to the terms of this Agreement, as security for the Bonds issued hereunder; *provided*, that, so long as the Company shall not be in default, to the knowledge of the Trustee, in the payment of the principal or the interest of any of the Bonds secured hereby, all or any of the said cash may be applied, from time to time, at the option of the Company, in one or more of the following ways:

A. All or any of the said cash shall be applied by the Trustee, from time to time, upon the written request of the Company, signed by its President or a Vice-President and its Treasurer or an Assistant Treasurer, to the purchase of such bonds or obligations of the United States of America, and in such amounts, as may be designated in such request, which bonds or obligations so purchased shall be held by the Trustee in lieu of the said cash and shall in turn be sold by the Trustee, from time to time, upon written request of the Company, similarly signed. Any loss resulting from any such sale shall promptly be made good by the Company, upon the written demand of the Trustee, by the deposit with the Trustee, subject to the terms and provisions of this Section 31, of an amount in cash equal to the amount of such loss. The Trustee shall not be responsible to the Company nor to

any holder of any Bond issued hereunder for any decline in market value or other loss resulting from any such purchases or sales of bonds or obligations of the United States of America.

B. Whenever the Company shall deliver to and pledge with the Trustee, in negotiable form or accompanied by duly executed transfer powers, all, but not part only, of the first mortgage bonds of a subsidiary company, of the character described in clause (b) of sub-division B of Section 30 hereof, and shall also deliver to the Trustee, with respect to such bonds, instruments of the character described in paragraphs (1), (2), (3), (4) and (5) of sub-division C of the said Section 30, the Trustee shall pay out to or upon the written order of the Company, signed by its President or a Vice-President and its Treasurer or an Assistant Treasurer, from the cash then on deposit with it under this Section 31, a sum equal to ninety per cent. of the aggregate principal amount of the bonds so pledged.

C. Unless otherwise applied as in this Section 31 provided, the said cash shall be applied by the Trustee, from time to time, so far as in its judgment shall be practicable, to the purchase, in the open market, of Bonds issued hereunder, at purchase prices not exceeding 105 per cent. of the principal amount thereof and accrued interest, all of which Bonds so purchased shall forthwith be cancelled by the Trustee and delivered to the Company, upon its written request therefor; and no Bonds shall thereafter be issued in lieu thereof.

D. Anything herein contained to the contrary notwithstanding, if at any time the Company shall call for redemption, pursuant to the provisions of Article Third hereof, all the Bonds then outstanding hereunder, any cash then held by the Trustee under the provisions of this Section 31 shall, upon the written request of the Com-

pany, signed by its President or a Vice-President and its Treasurer or an Assistant Treasurer, be applied by the Trustee to the redemption of the said Bonds; *provided*, that, on or before the date fixed for such redemption, the Company shall deposit with the Trustee such additional cash, if any, as may be required to redeem the Bonds in full, at the redemption price thereof.

SECTION 32. The Trustee may accept any certificate, written request, order or other instrument delivered to it pursuant to any of the provisions of this Article Fourth as conclusive proof of the facts therein set forth, and the Trustee shall be fully protected for or in respect of any action taken or suffered by it under any of the provisions hereof in reliance thereon; but the Trustee may, in its discretion, require such other and further proof of any such fact or facts as, under the circumstances, it may deem proper.

ARTICLE FIFTH.

SINKING FUND.

SECTION 33. In each quarterly period, commencing with the quarterly period ending June 15, 1921, the Company will set aside the sum of \$250,000, in cash, as and for a Sinking Fund for the retirement of the Bonds issued hereunder, which sum, so set aside, the Company will apply, or cause to be applied by its agent appointed for that purpose, to the purchase of Bonds in the open market, if obtainable, at prices not exceeding 105 per cent. of the principal amount thereof and accrued interest, which Bonds, so purchased, the Company shall forthwith deliver or cause to be delivered to the Trustee. In the event, however, that the Company, or its agent, shall not have been able, in any quarterly period, to purchase sufficient Bonds, at or below 105 per cent. of the principal amount thereof and accrued interest, to exhaust the entire amount

in the Sinking Fund, any unexpended balance thereof shall be credited upon the next quarterly payment, in discharge, *pro tanto*, of the Company's obligation with respect thereto. All Bonds so purchased for the Sinking Fund and delivered to the Trustee, shall be cancelled by the Trustee and redelivered to the Company, upon its written request therefor; and no Bonds shall thereafter be issued in lieu thereof.

ARTICLE SIXTH.

REMEDIES IN CASE OF DEFAULT.

SECTION 34. In case any one or more of the following events (hereinafter called "defaults") shall happen:

(a) Default in the payment of the principal of any of the Bonds when due, whether at maturity or pursuant to notice of redemption, or otherwise;

(b) Default in the payment of any instalment of interest on any of the Bonds, which default shall have continued for the period of thirty days;

(c) Default in the performance of, or a violation of, any other covenant, condition or agreement on the part of the Company in the Bonds or in this Agreement contained, and such default or violation shall continue unremedied for a period of sixty days after written notice thereof shall have been given to the Company by the Trustee, which may give such notice in its discretion, and shall do so upon the written request of the holders of twenty-five per cent. in aggregate principal amount of the Bonds then outstanding; or

(d) The Company shall be adjudicated a bankrupt by decree of a court of competent jurisdiction, or, by order of any such court, a receiver of the prop-

erty of the Company shall be appointed, and such order shall have been continued in effect for a period of sixty days, or the Company shall file a voluntary petition in bankruptcy or shall make an assignment for the benefit of the creditors;

then, in each and every such case, the Trustee, by written notice to the Company, may, and shall, upon the written request of the holders of twenty-five per cent. in aggregate principal amount of the Bonds then outstanding, declare the principal of all the Bonds then outstanding to be due and payable immediately; and, upon such declaration, the same shall become immediately due and payable, anything in this Agreement or in the Bonds contained to the contrary notwithstanding; *provided*, that if, at any time, either before or after the principal of the Bonds shall have been so declared due and payable, but before any sale of the pledged property shall have been made, all arrears of interest upon all the Bonds, with interest on overdue instalments of interest at the rate of eight per cent. per annum, together with the reasonable charges and expenses of the Trustee, its agents and attorneys, shall have been paid by the Company, and any and every other default by reason of which the principal of the Bonds may or might have been declared due hereunder shall have been remedied and made good, then, in each such case, the holders of a majority in aggregate principal amount of the Bonds then outstanding, by written notice to the Company and to the Trustee, may waive such default and its consequences and rescind any such declaration; but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 35. If default be made hereunder in any of the respects specified in Section 34 hereof, and such default shall continue for the period, if any, therein speci-

fied, then, in each and every such case, the Trustee may and, upon the written request of the holders of twenty-five per cent. in aggregate principal amount of the Bonds then outstanding, shall, either (a) offer for sale and sell the pledged property then in its possession, or (b) proceed by a suit or suits at law or in equity, as the Trustee may be advised by counsel, to enforce the payment of the Bonds or the performance of any of the covenants or conditions in respect of which the Company may be in default hereunder, or to foreclose this Agreement and sell the pledged property under the judgment or decree of a court of competent jurisdiction.

SECTION 36. Any sale or sales hereunder, unless a court of competent jurisdiction shall otherwise direct, shall be made at public auction at such place in the Borough of Manhattan, City of New York, and at such times and on such terms as the Trustee may determine, and the pledged property may be sold in such lots and such sales may be conducted in such manner as the Trustee may from time to time determine, or as may from time to time be directed by the holders of a majority in aggregate principal amount of the Bonds then outstanding. Notice of any such sale, whether under power of sale herein granted or under judicial proceedings, shall state the time when and the place where the same is to be made, shall contain a brief description of the pledged property to be sold and shall be published twice a week for two successive weeks prior to the date fixed for such sale in two daily newspapers of general circulation published in the Borough of Manhattan, City of New York; and such other notice shall also be given as may be required by any statute or rule or order of court.

The Trustee shall have power, in its discretion, to adjourn any sale, from time to time, as to the whole or

any part of the pledged property and, if so adjourned, to make such sale upon the day to which the adjournment is had, without further notice. Any sale made as herein provided shall be a perpetual bar, both at law and in equity, against the Company and its successors, and against all persons claiming or to claim the pledged property, or any part thereof, by, through or under it or them.

SECTION 37. Upon the sale of the pledged property, whether under the power of sale herein granted or under judicial proceedings, every purchaser shall be entitled, in making payment therefor, after paying in cash so much as may be necessary to cover the costs and expenses of the sale and of the proceedings incident thereto, and all other charges that may be required by decree or otherwise to be paid in cash, including the compensation of the Trustee and its expenses, to appropriate and use toward the payment of the remainder of the purchase price any of the Bonds and interest coupons outstanding hereunder, reckoning each Bond and interest coupon so appropriated and used at such sum as shall be payable thereon out of the net proceeds of the sale. If the net proceeds of such sale shall be sufficient to pay such Bonds and interest coupons in full, they shall be cancelled and, upon written demand, surrendered by the Trustee to or upon the order of the Company; but if the sum applicable in respect thereto is not sufficient to pay such Bonds in full, the sum so allowed on account thereof shall be noted thereon as paid.

At any sale, the Trustee, either in behalf of the holders of the Bonds or in its own behalf, or any holder of any Bond, may bid for and may purchase such property, and may make payment therefor as aforesaid, and, upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability.

In case of any sale of any part of the pledged property, the whole of the principal of the Bonds then outstanding, if not previously due, shall become immediately due and payable, anything in the Bonds or in this Agreement contained to the contrary notwithstanding.

SECTION 38. The proceeds of any sale of the pledged property, whether under the power of sale hereby granted or pursuant to judicial proceedings, together with any other sums which may then be held by the Trustee under any of the provisions of this Agreement as part of the security hereunder, shall be applied, subject to the provisions of Section 8 hereof, as follows:

First. To the payment of the costs, expenses, fees, and other charges of such sale, and a reasonable compensation to the Trustee, its agents and attorneys, and to the payment of all expenses and liabilities incurred and advanced, or disbursements made, by the Trustee;

Second. To the payment of the whole amount then due and unpaid for either principal or interest, or for both principal and interest, upon the Bonds, with interest on the overdue instalments of interest at the rate of eight per cent. per annum; and, in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid, then to the payment of such principal and interest ratably, according to the aggregate of such principal and the accrued and unpaid interest, without preference or priority of principal over interest, or of interest over principal, or of any instalment of interest over any other instalment of interest;

Third. To the payment of the remainder, if any, to the Company, its successors or assigns, or to

whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

SECTION 39. If default be made hereunder in any of the respects specified in Section 34 hereof, and such default shall continue for the period, if any, therein specified, the Trustee shall be entitled to receive and collect, for the benefit of the holders of the Bonds, any and all sums which may thereafter become due and payable for interest upon any bonds or other securities then pledged hereunder, or which may thereafter accrue as interest upon any moneys deposited with the Trustee hereunder. The Trustee shall apply any and all moneys so received and collected by it, subject to the provisions of Section 8 hereof, as follows:

First. In case the principal of the Bonds shall not have become due, to the payment of the interest in default thereon in the order of the maturity of the instalments of such interest, with interest thereon at the rate of eight per cent. per annum, such payments to be made ratably to the persons entitled thereto, without any discrimination or preference; or

Second. In case the principal of the Bonds shall have become due, by declaration or otherwise, to the payment of the accrued interest thereon (with interest on overdue instalments thereof at the rate of eight per cent. per annum) in the order of the maturity of such instalments, and, if any surplus remains, toward the payment of the principal of the Bonds, then due; such payments in every instance to be made ratably to the persons entitled thereto, without any discrimination or preference.

Upon the payment in full, as above provided, of whatever sum or sums may have been due for principal or for

interest, or both, or payable for other purposes, and upon the fulfillment and performance of all other obligations of the Company in respect of which it was in default under this Agreement, the Company shall thereafter be entitled to receive the income from the pledged property, unless the same shall have been sold as in this Article Sixth provided, in the same manner and to the same extent as though no default had occurred.

SECTION 40. If default be made by the Company in the payment of either the principal or the interest of any of the Bonds, whether the same shall become due by maturity, declaration, notice of redemption or otherwise, then, in each such case, upon demand of the Trustee, the Company agrees to pay to the Trustee for the benefit of the holders of the Bonds and interest coupons then outstanding, the whole amount then due and payable on all such outstanding Bonds and interest coupons, with interest upon overdue instalments of interest at the rate of eight per cent. per annum, and, in addition thereto, such further amount as shall be sufficient to cover the cost and expenses of collection, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and any expenses or liabilities incurred by the Trustee hereunder; and in case the Company shall fail to pay the same forthwith upon demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled to recover judgment against the Company for the whole amount thereof and to issue execution thereon against the whole or any part of the property of the Company, real or personal.

Any moneys collected by the Trustee under this Section 40 shall be applied by the Trustee in the same order and in the same manner as provided in Section 38 hereof for the application of the proceeds of the sale of the pledged property.

SECTION 41. All remedies conferred by this Agreement shall be deemed cumulative and not exclusive, and shall not be so construed as to deprive the Trustee of any legal or equitable remedy by judicial proceedings appropriate to enforce the conditions, covenants and agreements of this Agreement.

No delay or omission by the Trustee or by any holder of any Bond to exercise any right or power arising from or on account of any default hereunder shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to the Trustee or to the holders of the Bonds may be exercised, from time to time, and as often as may be deemed expedient.

Anything herein contained to the contrary notwithstanding, the holders of seventy-five per cent. in aggregate principal amount of the Bonds outstanding hereunder, from time to time, shall have the right to direct and control the action of the Trustee in making any sale of the pledged property, or in any proceedings by it to enforce the payment of the Bonds or the performance of any of the covenants and conditions hereof, or in foreclosing this Agreement, or in any other action or proceeding hereunder.

SECTION 42. No holder of any Bond issued hereunder shall have the right to institute any suit, action or proceeding, at law or in equity, for the collection of any sum due from the Company on such Bond, for principal or interest, or upon or in respect of this Agreement, or for the execution of any trust or power hereof, or for any other remedy under or upon this Agreement, unless such holder shall previously have given to the Trustee written notice of an existing default, and unless, also, such holder or holders shall have tendered to the Trustee security and

indemnity satisfactory to it against all costs, expenses and liabilities which might be incurred in or by reason of such action, suit or proceeding, and unless, also, the holders of twenty-five per cent. in aggregate principal amount of the Bonds then outstanding shall have requested the Trustee in writing to take action in respect of such default and the Trustee shall have declined or failed to take such action within thirty days thereafter; it being intended that no one or more holders of Bonds shall have any right in any manner to enforce any right hereunder, or under or in respect of any of the Bonds, except in the manner herein provided, and for the equal, proportionate benefit of all holders of the outstanding Bonds.

ARTICLE SEVENTH.

SUNDRY PROVISIONS.

SECTION 43. Any demand, request or other instrument required by this Agreement to be signed or executed by the holders of any Bonds may be in any number of concurrent writings of similar tenor, and may be signed or executed by such holders in person, or by attorney appointed in writing. Proof of the execution of any such demand, request or other instrument, or of the writing appointing any such attorney, and of the ownership by any person of any Bonds, shall be conclusive in favor of the Trustee and of the Company, with regard to due action taken by the Trustee or by the Company pursuant to such instrument, if such proof be made in the following manner:

The fact and date of the execution by any person of any such demand, request or other instrument or writing may be proved by the certificate of any notary public or any officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds to be recorded in any State within

the United States of America, certifying that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution, duly sworn to before any such notary public or other officer.

The fact of the holding of any Bonds the ownership of which shall not at the time be registered and the amounts and serial numbers of such Bonds and the date of holding the same, may be proved by a certificate executed by any trust company, bank, banker or other depositary (wherever situated), if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned the person named in such certificate had on deposit with or exhibited to such depositary the Bonds described in such certificate. For all purposes of this Agreement and of any proceeding pursuant hereto for the enforcement hereof or otherwise, such person shall be deemed to continue to be the holder of such Bonds until the Trustee shall have received notice in writing to the contrary. The ownership of any Bonds, the ownership of which shall at the time be registered, shall be proved by the register of such Bonds.

SECTION 44. As to all Bonds the ownership of which shall at the time be registered, the person in whose name the same shall be registered on the books of the Company shall for all purposes of this Agreement be deemed and regarded as the owner thereof, and payment of or on account of the principal of any such Bond shall be made only to or upon the order of such registered holder. Such payment shall be valid and effectual to satisfy and discharge the liability of the Company upon such Bonds to the extent of the sum or sums so paid.

The holder of any Bond the ownership of which shall not at the time be registered and the holder of any interest coupon pertaining to any Bond, whether the ownership of such Bond be registered or not, shall, for all purposes of this Agreement, be treated as the absolute owner of such Bond or interest coupon; and neither the Company nor the Trustee shall be affected by any notice to the contrary.

SECTION 45. No recourse shall be had for the payment of either principal or interest of any Bond or for any claim based thereon or otherwise in any manner in respect thereof or in respect of this Agreement, to or against any stockholder, officer or director of the Company, past, present or future, or his legal representatives or assigns, either directly or through the Company, by virtue of any statute, or by the enforcement of any assessment or penalty, or in any manner.

SECTION 46. The following are the definitions of various terms employed in this Agreement:

“Net current assets”, shall mean current assets, less current liabilities.

“Current assets”, shall include:

(a) Cash in bank, on hand and with fiscal agents; call loans secured by the pledge of securities listed on the New York Stock Exchange; unpledged notes, accounts, bills and trade acceptances receivable contracted in the ordinary course of business, if such notes, accounts, bills and trade acceptances receivable are due within twelve months (exclusive of notes, accounts or other evidences of indebtedness received in payment for the Company's securities, except amounts due from any firm or corporation regularly engaged in the buying and selling of investment securities); accrued interest, rents, and royalties receivable, and prepaid insurance, interest and taxes; *provided*, that from notes, accounts, bills and

trade acceptances receivable there shall be excluded all bad or doubtful items.

(b) Planted and growing administration cane and advances to *colonos* and contractors, and advances on account of operations of current crop; *provided*, there be deducted a proper allowance for crop damage to either administration or *colonos* cane and that all bad or doubtful items be excluded from advances; and *provided*, further, that this item (b) shall never be taken at an amount in excess of fifty per cent. of the sum of items (a), (c) and (d) hereof.

(c) Raw and refined sugar and sugar in the process of refining and materials and supplies on hand. Raw and refined sugar and sugar in process of refining shall be valued at cost or market price, whichever is lower.

(d) Readily marketable bonds and stocks of corporations other than subsidiary companies, paying regular interest and dividends, such bonds and stocks to be valued at not more than the market value thereof.

“Current liabilities”, shall include accounts, bills, notes and acceptances payable, maturing within one year after their date; loans from banks and bankers, and salaries, wages, interest, rents, royalties, annuities, and taxes accrued, including income and excess profits taxes.

THE FOREGOING DEFINITIONS relate to a consolidated balance sheet of the Company and of its subsidiary companies, after eliminating all intercompany items. Such consolidated balance sheet shall, however, include only such proportion of the respective current assets and current liabilities, shown on a subsidiary company's balance sheet, as the stock of such subsidiary company owned or controlled by the Company shall bear to the total outstanding capital stock of such subsidiary company.

“Fixed assets”, shall mean investments in cane lands, and other lands actually employed in the business of the company owning the same, sugar re-

fineries, plants and equipment, including land and buildings, and any bonds and stocks not of the character defined as current assets.

"Subsidiary company", shall be any corporation of which sixty per cent. or more of the shares of stock having ordinary voting power not dependent upon an event of default are owned or controlled by the Company.

"Funded obligations", shall be any bonds, debentures, notes or other evidences of indebtedness which by their terms mature more than one year after date.

SECTION 47. Nothing in this Agreement shall prevent the sale by the Company of its properties as an entirety to, or the consolidation or merger of the Company with or into, any other corporation; *provided*, that, as a condition of any such sale, merger or consolidation, the corporation to which such property shall be sold, or with or into which such consolidation or merger shall be made, shall assume the due and punctual payment of principal and interest of all Bonds at the time outstanding hereunder and the performance of all the covenants and conditions contained in this Agreement; *provided*, that no such sale, consolidation or merger shall be made if the holders of fifty per cent. in aggregate principal amount of the Bonds then outstanding hereunder shall make objection thereto in the manner hereinafter provided. If at any time the Company shall desire so to sell its properties to, or to consolidate or merge with or into, any other corporation, the Company shall file with the Trustee a written statement, signed by its President or a Vice-President and its Secretary or an Assistant Secretary, verified by one of such officers, setting forth in such reasonable detail as shall be satisfactory to the Trustee the proposed terms of sale, consolidation or merger, and naming the date on which it is proposed that such sale, consolidation or merger shall

take effect, which date shall not be less than thirty days after the date of the filing of the said statement with the Trustee; and, in no case shall such sale, consolidation or merger take effect prior to the date so named. Upon receipt of the said statement, the Trustee, at the expense of the Company, shall cause notice of the proposed sale, consolidation or merger described therein to be published in two daily newspapers of general circulation, published in the Borough of Manhattan, City and State of New York, twice a week for two successive weeks, the first publication to be not less than twenty days prior to the date named in the said statement of the Company as the date on which it is proposed that such sale, consolidation or merger shall take effect, and, at least twenty days prior to such date, the Trustee shall also cause similar notice to be mailed to the registered holders of any of the Bonds. Such notice shall briefly set forth the proposed terms of sale, consolidation or merger, as shown in the statement of the Company filed with the Trustee, and shall call upon any of the holders of the Bonds who may not approve of such proposed sale, consolidation or merger, to file with the Trustee, not later than twenty days after the date of the first publication of the said notice, written notice addressed to the Trustee, that such holder objects thereto. If, on or before the said date, the Trustee shall receive such written notice of objection from the holders of fifty per cent in aggregate principal amount of the Bonds then outstanding, the Trustee shall forthwith notify the Company; and, in such event, the Company will not suffer or permit the proposed sale, consolidation or merger to take effect or to be consummated, but will suspend or discontinue all proceedings with respect thereto.

SECTION 48. All the covenants, stipulations and agreements in this Agreement contained by or on behalf of the Company, are and shall be for the sole and exclusive benefit of the parties hereto and of the respective

holders and owners of the Bonds and interest coupons hereby secured, and shall bind and apply to the successors and assigns of the Company, whether so expressed or not. Whenever, in this Agreement, either of the parties hereto is referred to, such reference shall be deemed to include the successor or successors and assigns of such party, and all covenants, promises and agreements in this Agreement contained by or on behalf of the Company, or by or on behalf of the Trustee, shall bind and inure to the benefit of the respective successors and assigns of such party, whether so expressed or not.

ARTICLE EIGHTH.

CONCERNING THE TRUSTEE.

SECTION 49. The Trustee accepts the trusts of this Agreement and agrees to execute them upon the terms and conditions hereof, including the following, to all of which the Company and the holders of the Bonds agree:

The Trustee shall be under no obligation to see to the performance or observance of any of the covenants or agreements on the part of the Company.

The Trustee shall not be responsible in respect of the validity of this Agreement or of the Bonds, nor for the sufficiency of the security provided hereby; and it makes no representation in respect thereof.

The Trustee shall not be responsible in any manner for the operations of the Sinking Fund provided for in Article Fifth hereof, nor for any dealings of the Company or of any agent of the Company therewith, nor to see that any Sinking Fund instalment is set aside or applied in accordance with the provisions of the said Article Fifth; and it assumes no duty or obligation with respect thereto.

The Trustee shall not be responsible for the recitals herein or in the Bonds contained, all of which are made by the Company, solely; nor shall the Trustee be respon-

sible in any manner for effecting or renewing any insurance upon any of the property of the Company, or of any subsidiary company, or for the application of the proceeds of any such insurance, or for the application of the proceeds of any sale of fixed assets as provided in Section 20 hereof, or for the payment of any tax, assessment or imposition which may at any time be levied or assessed against the Company or any subsidiary company or against any of the property of the Company or of any subsidiary company.

The Trustee shall be entitled to reasonable compensation for all services rendered hereunder, and such compensation, as well as all reasonable expenses necessarily incurred and actually disbursed hereunder by the Trustee, the Company agrees to pay; and, until so paid, the Trustee shall have a lien therefor upon the pledged property, preferential to the Bonds.

Until the Trustee shall have received written notice to the contrary from the holders of not less than twenty-five per cent. in aggregate principal amount of the Bonds then outstanding, the Trustee may, for all the purposes of this Agreement, assume that no default has been made in the payment of any of the Bonds or of the interest thereon, or in the observance or performance of any other of the covenants contained in the Bonds or in this Agreement, and that the Company is not in default under this Agreement.

The Trustee shall not be under any obligation to take any action hereunder, which in its opinion will be likely to involve it in expense or liability, unless one or more holders of Bonds shall, as often as required by the Trustee, furnish it security and indemnity satisfactory to it against such expense and liability; nor shall the Trustee be required to take any action in respect of any default hereunder unless requested by an instrument in writing signed by the holders of not less than twenty-five per

cent. in aggregate principal amount of the Bonds then outstanding.

All moneys coming into the hands of the Trustee may be treated by it, until such time as it is required to pay out the same, as a general deposit, and the interest, if any, paid thereon shall be at such rate as the Trustee allows on similar deposits.

All rights of action under this Agreement may be enforced by the Trustee without the possession of any Bonds, or the production thereof on the trial or other proceedings relative thereto.

The Trustee, in its individual capacity, may acquire and hold any Bonds issued hereunder with the same right and to the same extent as if it were not such Trustee.

Any action taken by the Trustee at the request or with the consent of any person who at the time is the owner of any Bond shall be conclusive and binding upon all future holders of such Bond.

The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall have been selected with reasonable care, nor for any error of judgment, nor for any act done or omitted by it in good faith, nor for any mistake of fact or of law, nor for anything whatever in connection with this Agreement, except for its own wilful misconduct.

The Trustee may construe any of the provisions of this Agreement; and any construction placed upon any provision hereof by the Trustee in good faith shall be binding upon the Company and upon the holders of all Bonds issued hereunder.

The Trustee may advise with legal counsel; and any action under this Agreement, taken or suffered in good faith by the Trustee in accordance with the opinion of counsel, shall be conclusive on the Company and on all

holders of Bonds, and the Trustee shall be fully protected in respect thereto.

The Trustee shall be protected in acting upon any notice, request, waiver, consent, certificate, affidavit, indemnity bond or other instrument believed by it to be genuine and to be signed by the proper party or parties.

SECTION 50. The Trustee or any successor may resign as trustee hereunder by filing with the Company an instrument in writing, resigning the trusts hereby created, two weeks (or such shorter time as may be accepted by the Company as adequate) before such resignation shall take effect.

Any trustee hereunder may be removed at any time by an instrument in writing filed with the trustee for the time being acting hereunder and executed by the holders of two-thirds in aggregate principal amount of the Bonds then outstanding; *provided*, there be paid to the trustee so removed all moneys due to it hereunder.

SECTION 51. In case, at any time, any trustee acting hereunder shall resign or shall be removed or otherwise shall become incapable of acting, a successor may be appointed by the holders of a majority in aggregate principal amount of the Bonds then outstanding by an instrument signed by such holders or their attorneys in fact duly authorized; but until a new trustee shall be so appointed hereunder, the Company may, by an instrument in writing, executed by order of its Board of Directors, appoint a trustee to fill such vacancy. Any new trustee so appointed by the Company shall immediately be superseded by a trustee appointed in the manner above provided by the holders of a majority in aggregate principal amount of the Bonds.

Any trustee appointed under any of the provisions of this Article shall always be a national banking association, bank or trust company having an office in the Borough of Manhattan, City of New York, and having a

capital and surplus aggregating at least One Million Dollars, if there shall be such a banking association, bank or trust company willing and able to accept the trusts upon reasonable or customary terms.

SECTION 52. Any successor trustee appointed hereunder shall execute and deliver to the Company and to the retiring trustee an instrument accepting such appointment hereunder, and thereupon such successor trustee shall be invested with the same authority, rights, powers, discretion and duties herein provided for the Trustee; but the trustee so resigning or removed, shall, at the request of the Company, its successors or assigns, or of the successor trustee so appointed, and upon payment of its charges and disbursements then unpaid, make and execute such deeds, conveyances, assignments or assurances to its successor as its successors may reasonably require, and shall deliver to such successor in negotiable form or accompanied by suitable transfer powers all the pledged property and cash then in its possession hereunder.

IN WITNESS WHEREOF, the Company and the Trustee have caused this Agreement to be signed by their respective Presidents or Vice-Presidents, and their respective corporate seals to be hereto affixed, duly attested, as of the day and year first above written.

THE CUBAN-AMERICAN SUGAR COMPANY,

By H. W. WILMOT

[CORPORATE SEAL]

Vice-President

Attest:

WALTER J. VREELAND

Secretary

THE NATIONAL CITY BANK OF NEW YORK,

By THOS. A. REYNOLDS

[CORPORATE SEAL]

Vice-President

Attest:

C. H. CLARK

Assistant Cashier

STATE OF NEW YORK,}
County of New York.}

On the 23rd day of March, 1921, before me personally came H. W. WILMOT, to me known, who, being by me duly sworn, did depose and say, that he resides in the City and State of New York; that he is the Vice-President of THE CUBAN-AMERICAN SUGAR COMPANY, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of the said corporation, and that he signed his name thereto by like authority.

R. L. DAVIS

[NOTARIAL SEAL]

Notary Public, Kings Co. No. 250
Kings County Register No. 1141
Certificate Filed in New York Co.
New York County Clerk's No. 391
New York Co. Register's No. 1390
Commission expires Mar. 31, 1921

STATE OF NEW YORK,}
County of New York.}

On the 23rd day of March, 1921, before me personally came THOMAS A. REYNOLDS, to me known, who, being by me duly sworn, did depose and say, that he resides in the City and State of New York; that he is a Vice-President of THE NATIONAL CITY BANK OF NEW YORK, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of the said corporation, and that he signed his name thereto by like authority.

R. L. DAVIS

[NOTARIAL SEAL]

Notary Public, Kings Co. No. 250
Kings County Register No. 1141
Certificate Filed in New York Co.
New York County Clerk's No. 391
New York Co. Register's No. 1390
Commission expires Mar. 31, 1921



3 0112 098549626